

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:
KYLE FREISTAT, :
:
Plaintiff, : 17-CV-05870 (RRM)
:
v. :
:
NYPD, et al., : 225 Cadman Plaza East
:
Defendants. : Brooklyn, New York
:
-----X
March 15, 2018

TRANSCRIPT OF CIVIL CAUSE FOR INITIAL TELEPHONE CONFERENCE
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: KYLE FREISTAT, Pro Se
#4411705961
Brooklyn Detention Complex
275 Atlantic Avenue
Brooklyn, New York 11201

For the Defendants: SAMANTHA MILLAR, ESQ.
CAROLYN DEPOIAN, ESQ.
New York City Law Department
100 Church Street
New York, New York 10007

Court Transcriber: SHARI RIEMER, CET-805
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 (Proceedings began at 9:31 a.m.)

2 THE COURT: Civil Cause for Initial Telephone
3 Conference, Docket No. 17-CV-5870, Freistat v. New York City
4 Police Department, et al.

5 Will the parties please state your names for the
6 record?

7 MR. FREISTAT: Kyle Freistat.

8 Good morning, Your Honor; Samantha Millar from the
9 New York City Law Department for defendant Gasperetti.

10 MS. DEPOIAN: Good morning, Your Honor. This is
11 Carolyn Depoian. How are you? Also for Gasperetti.

12 THE CLERK: The Honorable Lois Bloom presiding.

13 THE COURT: Good morning, Mr. Freistat. This is
14 Magistrate Judge Bloom. How are you today, sir?

15 MR. FREISTAT: I'm fine. I can't complain.

16 THE COURT: Good.

17 MR. FREISTAT: I've been better.

18 THE COURT: Thank you. Good morning, Ms. Millar and
19 Ms. Depoian. Nice to hear your voices again.

20 This is an initial telephone conference in
21 plaintiff's civil rights action pursuant to 42 United States
22 Code Section 1983. Mr. Freistat, you're alleging that
23 defendant Officers Gasperetti and Arlistico used excessive
24 force against you in violation of your constitutional rights.
25 The defendants filed a motion to stay the case on March 1st

1 because your underlying criminal proceedings are still
2 pending. And I wanted to get first all of the defendants
3 served before there was any stay entered and two, I wanted to
4 get you on the phone so that you would understand what is
5 going on with your case.

6 MR. FREISTAT: Yes, Your Honor.

7 THE COURT: So you're alleging, sir, that on July
8 26, 2017, you were stopped while driving a car by these two
9 officers, and you allege that these officers used excessive
10 force against you including strangling you, beating your body,
11 face, and skull and leaving marks of a permanent nature. And
12 you allege that you were beaten so badly that you could barely
13 stand during your arraignment and you had to be held up by two
14 court officers. And then you allege the police, prosecutors,
15 and judge all engaged in misconduct that have left you
16 permanently injured and you're looking for \$7 million.

17 So you have every right to proceed in your case,
18 sir, but when there is a criminal case pending generally
19 speaking if it arises out of the same claim -- the same
20 incident -- if your criminal case arising out of your arrest
21 on July 26th is still pending the defendants will frequently
22 ask the court to stay the civil rights case for two reasons.
23 One, you're not supposed to be able to bring a civil rights
24 action against police if the civil rights violation would
25 undermine the validity of any conviction. Well, there is no

1 conviction so it's clear that you're bringing a case that's
2 timely filed against two officers for beating you while they
3 arrested you.

4 MR. FREISTAT: Exactly.

5 THE COURT: But the other part of the case is that
6 if Gasperetti and Arlistico are going to be part of the
7 criminal case in any way, you have certain rights, Mr.
8 Freistat, in a criminal case such as the right not to testify
9 and the right not to answer questions. And in a civil case,
10 if you were to proceed now rather than having this case
11 stayed, meaning wait for the criminal case to conclude, you
12 might have to answer questions here without having a lawyer
13 because in this case you're the plaintiff trying to vindicate
14 your rights whereas in the criminal case you have
15 constitutional rights not to speak and not to testify, and the
16 Government bears the burden of proof beyond a reasonable doubt
17 that you are guilty of the crime for which you are accused.
18 So bringing a civil case at the same time that there is a
19 criminal case is a little complicated.

20 MR. FREISTAT: Yeah.

21 THE COURT: And that you have brought the case stops
22 the statute of limitations which for a civil rights case is
23 three years from the event. So I wanted to get the defendants
24 served with your complaint so that they would know that you
25 had brought a timely civil rights complaint against them.

1 MR. FREISTAT: Yes, ma'am.

2 THE COURT: But then I was going to stay the case
3 waiting for the conclusion of your criminal matter.

4 MR. FREISTAT: Which is -- which is no telling when
5 that's going to be. And for the record and for the record
6 only I have no problem answering questions for you because
7 evidently, you know what I mean, I've been accused of some
8 vicious, heinous acts, lied on constantly, and continue to be
9 lied on on some serious charges. I'm fighting for my life.
10 So regardless of that end or the other, Your Honor, I have no
11 problem sitting in front of anybody and stating what happened
12 that day because guess what? They have no problem telling the
13 opposite of what happened that day. I have no problem sitting
14 in front of you and answering the questions, whatever
15 questions you ask me. I would be glad to do it.

16 THE COURT: Mr. Freistat -- Mr. Freistat, I'm not
17 the one who would be asking you the questions.

18 MR. FREISTAT: Well, for whoever, Your Honor.

19 THE COURT: Well, again, it would be the defendants'
20 lawyers, and you would be unrepresented because where you have
21 the right to counsel in a criminal case, you have no right to
22 counsel in a civil rights action where you are the one trying
23 to vindicate your rights.

24 MR. FREISTAT: Yeah.

25 THE COURT: And as much as I believe you, sir, that

1 you're being earnest when you tell me that you have no problem
2 because they're the ones that are lying, I don't want you to
3 compromise your criminal case.

4 MR. FREISTAT: Yeah.

5 THE COURT: Because you are dealing with your civil
6 case.

7 MR. FREISTAT: Okay. Okay.

8 THE COURT: Do you hear what I'm saying? I'm not
9 doubting --

10 MR. FREISTAT: I understand, Your Honor.

11 THE COURT: I'm not doubting --

12 MR. FREISTAT: I fully understand.

13 THE COURT: -- that you want this to proceed. But
14 what I'm saying to you is that there are certain things in the
15 criminal matter --

16 MR. FREISTAT: Yeah.

17 THE COURT: -- that you are fighting for your life.
18 You're absolutely right, and that you shouldn't compromise any
19 of your arguments in your -- in your criminal case by having
20 previously --

21 MR. FREISTAT: I understand.

22 THE COURT: -- committed under oath to certain
23 testimony in your civil case.

24 MR. FREISTAT: I fully understand. I fully
25 understand.

1 THE COURT: Okay. So I wanted to get you on the
2 phone so that you didn't think that the Court just didn't care
3 and was granting whatever the defendants put in front of the
4 Court. But I want you to understand that, you know, again the
5 case was already terminated against the NYPD, the Department
6 of Correction, and the Department of Justice, and I want you
7 to understand why Mr. Freistat.

8 MR. FREISTAT: Yes.

9 THE COURT: The statute that you are bringing this
10 case under, 42 United States Code Section 1983, says that any
11 person acting under color of law who violates someone's
12 constitutional rights can be held liable.

13 MR. FREISTAT: Yes.

14 THE COURT: I'm boiling it down but that essentially
15 what the statute says.

16 MR. FREISTAT: Yes.

17 THE COURT: And NYPD, Department of Correction, and
18 Department of Justice are not a person. You can only sue
19 individuals acting --

20 MR. FREISTAT: Okay.

21 THE COURT: -- under color of law. You can't sue a
22 hospital, you can't sue a prison. Under the Civil Rights
23 Statute, you can only name a person acting under color of
24 state law. Do you understand?

25 MR. FREISTAT: Fully understood.

1 THE COURT: Okay. So that's why the Court
2 terminated the case against those institutions, NYPD,
3 Department of Correction, Department of Justice are not a
4 person. Okay?

5 MR. FREISTAT: Okay.

6 THE COURT: So now they have moved to stay the --
7 because of the ongoing criminal investigation, and I want you
8 to understand. Your case has been filed. We are getting
9 service made on both Arlistico and Gasperetti so that if and
10 when you are able to resolve the criminal case you will not
11 have a time issue in your case against those two officers.

12 MR. FREISTAT: Thank you.

13 THE COURT: You will have preserved your rights to
14 pursue this civil rights action against these two officers.

15 MR. FREISTAT: Thank you.

16 THE COURT: Ms. Millar, my question is there should
17 be body cameras or these should be a camera on the vehicle.
18 What about video of this event?

19 MS. MILLAR: Your Honor, at this time we don't have
20 any information about whether the officers were wearing body
21 cams or dash cams.

22 THE COURT: I want that to be something you
23 immediately try to preserve. If there's a body cam or a dash
24 cam, I want that video preserved, and I want you to write to
25 me. I'll give you two weeks to do that.

1 MS. MILLAR: Yes, Your Honor.

2 THE COURT: So by the -- by the 29th I want there to
3 be a letter whether or not there's video or any sort of
4 surveillance.

5 Mr. Freistat.

6 MR. FREISTAT: Yes, ma'am.

7 THE COURT: Where did --

8 MR. FREISTAT: I was about to ask the same question.
9 Why did that car didn't have no video camera.

10 THE COURT: Well, we'll see if it did. So Mr. --
11 without saying a whole lot, you say that they approached you
12 while you were in a stationary position in your vehicle.

13 MR. FREISTAT: Yes, and I handed them the paperwork
14 for the car and my license. And they run the license, they
15 run the car -- the car paperwork, and even in the police
16 report those are missing. It's nothing in the police report
17 shows that they run the car and all of that.

18 THE COURT: Mr. Freistat, start me back at square
19 one. Where were you, sir?

20 MR. FREISTAT: I was at between 176 and Brinkerhoff.
21 I stopped on the stop sign that they said I run. I stopped --
22 I came to the stop sign --

23 THE COURT: Sorry, sorry, sorry, sorry. Slow down.
24 176 and Brinkerhoff?

25 MR. FREISTAT: Yes, in Queens -- Jamaica, Queens.

1 THE COURT: And -- okay. And were you in your own
2 car?

3 MR. FREISTAT: No, I was in a friend's car.

4 THE COURT: And what time of day was it, sir?

5 MR. FREISTAT: I think it was a little after 2:00.

6 THE COURT: 2:00 in the morning or 2:00 in the
7 afternoon?

8 MR. FREISTAT: No, 2:00 in the afternoon.

9 THE COURT: Okay. And they say you didn't stop at a
10 stop sign?

11 MR. FREISTAT: Yes, they said I did like a puzzle --
12 like a stop-and-go.

13 THE COURT: Okay.

14 MR. FREISTAT: Which at that specific stop sign
15 there's no way you could do a stop-and-go because it's the --
16 you got incoming traffic that come towards you. So if you do
17 a stop-and-go you could literally cause a accident.

18 THE COURT: Okay. So they --

19 MR. FREISTAT: I know -- okay.

20 THE COURT: They pull you over.

21 MR. FREISTAT: Yeah, after they pulled me over they
22 say the reason that they pulled me is for the broke -- for a
23 broken taillight and for failure to stop on a stop sign.
24 Okay. All right. They asked for the -- for the license,
25 registration, and et cetera, which I handed over to them.

1 Everything checked out. After everything checked out I was
2 good to go. They tell me I'm free to go. They asked me a
3 couple of questions about addresses, and I tell them I don't
4 know those addresses. Okay. After I tell them I don't know
5 those addresses I was all right, cool, I've checked out. I
6 had a family member CO badges and the Social in it. That's
7 when they started harassing me about the Social. After --

8 THE COURT: Wait, wait, wait, wait.

9 MR. FREISTAT: After --

10 THE COURT: Stop. You had a family member's CO
11 badge in your wallet?

12 MR. FREISTAT: Yes. Yes. And the Social taped to
13 it. So he started questioning me about the Social --

14 THE COURT: Wait, wait, wait, wait. Social
15 Security number?

16 MR. FREISTAT: Yeah, Social Security card.

17 THE COURT: Okay.

18 MR. FREISTAT: Taped to it. That's how I got it.
19 So I tell him that's my family member. If they want to allow
20 me to walk with the Social and the -- and the badge, that's
21 what -- that's how I got it, and that's how I walk with it. I
22 never removed it, and that's what it started from. That's
23 where he started harassing me.

24 THE COURT: I'm sorry. Mr. Freistat, I just want to
25 make sure I understand. So the stop happened, everything

1 cleared on the car, they said you're free to go.

2 MR. FREISTAT: Yes. Because my -- the car was
3 clean, the license was clean, and the only reason why he start
4 harassing me now is because of the badge -- and the Social and
5 the badge.

6 THE COURT: Where was that badge and that Social
7 Security --

8 MR. FREISTAT: It was right on my lap. I was --

9 THE COURT: It was right on your -- I'm sorry?

10 MR. FREISTAT: It was on my lap.

11 THE COURT: It was on your lap.

12 MR. FREISTAT: Yeah, I opened it to put the Social
13 -- to put the license back in.

14 THE COURT: Okay. So, look, I don't want to ask
15 you --

16 MR. FREISTAT: They didn't take no pictures --

17 THE COURT: Mr. Freistat, I don't want to ask you
18 more questions because again you have an attorney --

19 MR. FREISTAT: Yeah.

20 THE COURT: -- in the criminal case, and I'm sure he
21 or she is going to want you to keep your mouth shut about any
22 of the things that led to your arrest. Is this incident what
23 causes you now to be charged in a criminal case?

24 MR. FREISTAT: Yes.

25 THE COURT: I don't want to -- I don't want to in

1 any way influence that criminal case. So again, I appreciate
2 you giving me just the amount of information you gave me now.
3 Mr. Freistat, how old a man are you, sir?

4 MR. FREISTAT: Thirty-nine years old, ma'am.

5 THE COURT: Okay. And you've been in custody since
6 this event?

7 MR. FREISTAT: Yes, and for the record, there was no
8 -- I was given no ticket, no summons for the brake light or
9 the stop sign -- or the failure to stop at the stop sign.

10 THE COURT: So one of the -- one of the things which
11 is what I was trying to explain to you is that in a civil
12 rights action, here you have a claim that they used excessive
13 force against you which --

14 MR. FREISTAT: Yes, they did.

15 THE COURT: -- doesn't affect the validity of any
16 conviction. Somebody could be convicted of a crime and still
17 bring a civil rights action saying that they were beaten up by
18 the police without reason, that they used unreasonable,
19 excessive force when they were arrested. But I'm hearing from
20 you that you should have never been arrested as part of what
21 your claim is; is that correct?

22 MR. FREISTAT: Exactly.

23 THE COURT: So in order to make that claim that you
24 never should have been arrested, that's a false arrest claim
25 which is --

1 MR. FREISTAT: Yes.

2 THE COURT: -- different than an excessive force
3 claim, and you can't bring a false arrest claim unless you are
4 vindicated of the charges. And so --

5 MR. FREISTAT: No problem.

6 THE COURT: -- I want you to understand this --

7 MR. FREISTAT: But, Your Honor --

8 THE COURT: -- even if they ask you to plead to
9 something else and give you time served, if you plead to
10 something else the likelihood is you won't be able to bring a
11 false arrest claim.

12 MR. FREISTAT: Okay. Okay. I understand, Your
13 Honor.

14 THE COURT: Okay? I'm not telling you what to do,
15 Mr. Freistat.

16 MR. FREISTAT: I know. I know. I know.

17 THE COURT: But I want you to know that your
18 excessive force claim could go forward no matter what
19 happens --

20 MR. FREISTAT: Yes.

21 THE COURT: -- with your criminal charges. But
22 your --

23 MR. FREISTAT: Fully understood.

24 THE COURT: But your false arrest claim would not be
25 able to go forward unless you're vindicated and all the

1 charges are dismissed.

2 MR. FREISTAT: Yeah.

3 THE COURT: If they get you to plead to anything
4 regarding those charges then that will undermine your ability
5 to bring this civil rights claim for false arrest.

6 MR. FREISTAT: Yes.

7 THE COURT: You could still proceed on your
8 excessive force claim. So I'm directing Ms. Millar to get the
9 body cam or the video cam regarding this incident. I would
10 also like you -- I know you just gave me Arlistico's service
11 address, so we're sending the marshals to serve Police Office
12 Anthony Arlistico, Mr. Freistat.

13 MR. FREISTAT: Thank you.

14 THE COURT: And that's an order that I just signed
15 yesterday.

16 MR. FREISTAT: Thank you, Your Honor.

17 THE COURT: So again, we are moving it but I do want
18 you to know once I get that both these defendants have been
19 served, is there anybody else that you're trying to name? You
20 can't name the prosecutor, you can't name the judge. But you
21 may be able to name -- I don't know if there was anybody else
22 involved in the false arrest, and you should think about that.
23 You have three years from the date of the incident to bring a
24 claim. The incident happened July 26, 2017, so you're still
25 well within your time.

1 MR. FREISTAT: Yes.

2 THE COURT: But I really do want you, Mr. Freistat,
3 to focus your energy with your attorney on your criminal
4 matter, okay?

5 MR. FREISTAT: I will. Thank you.

6 THE COURT: Okay. So I am directing the City to by
7 two weeks write a letter to the Court with Mr. Freistat
8 getting a copy of -- that they've made a diligent search for
9 body cam or for the video taken from the officer's car. And
10 if there was video taken I do want it to be produced, and if
11 there wasn't video taken I want there to be an explanation in
12 the letter why there is no video.

13 MR. FREISTAT: Thank you.

14 MS. MILLAR: Yes, Your Honor.

15 THE COURT: And, Mr. Freistat, again --

16 MR. FREISTAT: Yes, ma'am.

17 THE COURT: -- once I get both officers served I am
18 going to stay the matter until your criminal proceedings have
19 been adjudicated so that you don't prejudice yourself in your
20 criminal case.

21 MR. FREISTAT: Thank you, ma'am. God bless you,
22 ma'am. Thank you.

23 THE COURT: Well, again, Mr. Freistat, I'm not
24 giving you what you want. You want to win both your criminal
25 case and your civil case. I'm just telling you I don't want

1 you to harm yourself because you're moving forward on your
2 civil case. And you'll speak to your lawyer on your criminal
3 case. They would tell you you don't want to harm yourself by
4 making statements even though I believe you that you want to
5 tell the truth, your criminal case is more important right
6 now.

7 MR. FREISTAT: That's all I have in this matter
8 here. Even if -- even if they take the opposite and they find
9 me guilty for something I did not do, at least I know I tell
10 the truth of what happened that day so it won't happen to
11 another person.

12 THE COURT: Well, again, Mr. Freistat --

13 MR. FREISTAT: You know, I just want to --

14 THE COURT: Mr. Freistat --

15 MR. FREISTAT: Yeah.

16 THE COURT: -- the other thing that you'll probably
17 have to sign but not just yet is if you asked for any medical
18 care.

19 And I guess I should tell you to do that now as
20 well, Ms. Millar. He's saying that he was so badly beaten
21 that he couldn't stand during the arraignment and had to be
22 held up by court officers. So you --

23 MR. FREISTAT: My criminal lawyer knows this because
24 I was supposed to go back to the hospital and the judge asked
25 them to give me some water or some food, which they denied me,

1 and they -- I was -- my due process was violated. I was
2 arraigned regardless of my condition. It was [inaudible].

3 THE COURT: Well, again, I'll ask you to work with
4 your attorney, since you're still in touch, to get the names
5 of who those court officers are because they may be witnesses.
6 They would not likely be defendants because they didn't cause
7 you the harm that you're alleging.

8 MR. FREISTAT: Yeah.

9 THE COURT: But if you're saying that were your mug
10 shots taken while you were beaten so that there's going to be
11 some proof in your mug shots that you were beaten?

12 MR. FREISTAT: Yes.

13 THE COURT: What are the marks of the permanent
14 nature?

15 MR. FREISTAT: I have a big mark on my skull, a mark
16 on the side of my -- right beside my eye, one right beside my
17 ear, and I've got scars all over my -- both hands. And I had
18 a fractured foot.

19 THE COURT: Were you taken to the hospital?

20 MR. FREISTAT: Yes, I was taken to Jamaica Hospital.

21 THE COURT: So let's get releases by the same date,
22 Ms. Millar, for Jamaica Hospital's record just because that
23 always takes forever.

24 And did they also see you at Rikers or at --

25 MR. FREISTAT: Yes, they did. Yes, they did.

1 THE COURT: Okay. So let's get releases for both
2 Jamaica Hospital.

3 Any other --

4 MR. FREISTAT: They sent me to VCBC. I was sent to
5 VCBC at the time.

6 THE COURT: Anything on Rikers would be the health -
7 -

8 MR. FREISTAT: Same, yeah, yeah. Precisely.

9 MS. MILLAR: Noted, Your Honor. We may have a
10 release already for Jamaica, but we'll confirm. And we'll
11 certainly get the releases out to Mr. Freistat if we don't
12 have them already.

13 THE COURT: So, Mr. Freistat, they would be in
14 charge of getting the medical records.

15 MR. FREISTAT: Thank you.

16 THE COURT: And Vernon C. Bain is still a part of
17 Rikers, isn't them both --

18 MR. FREISTAT: Yes.

19 THE COURT: -- considered part of Rikers, Ms.
20 Millar?

21 MS. MILLAR: Yes, we believe so, Your Honor.

22 THE COURT: Okay. So you'll get all of the medical
23 records so that we'll have those. And if there are mug shots,
24 I believe you should get the color mug shot because he's
25 saying that it will show the injuries to his head, okay?

1 MS. MILLAR: Yes, Your Honor.

2 THE COURT: Okay. Mr. Freistat, we've done as much
3 as we can for today.

4 MR. FREISTAT: Thank you.

5 THE COURT: Any other questions today before we
6 adjourn, sir?

7 MR. FREISTAT: That will be fine. Thank you.
8 You've done enough. God bless you, and I thank you for doing
9 this for me.

10 THE COURT: Well, Mr. Freistat --

11 MR. FREISTAT: [Inaudible], Your Honor.

12 THE COURT: -- one step at a time.

13 MR. FREISTAT: Yes.

14 THE COURT: Keep focused and cooperate --

15 MR. FREISTAT: I will. I --

16 THE COURT: -- with your defense attorney.

17 And anything further, Ms. Millar and Ms. Depoian?

18 MS. MILLAR: No, Your Honor. Thank you very much.

19 THE COURT: Then this matter is adjourned. And once
20 I see that there has been service made on both defendants and
21 they have responded you could renew your motion to stay. And
22 then at that point, I will stay it and set it on a status
23 conference for when Mr. Freistat tells me that the charges
24 against him have been adjudicated. With that, we are
25 adjourned. Thank you.

1 MR. FREISTAT: Thank you.

2 MS. MILLAR: Thank you, Your Honor. Have a nice --

3 (Proceedings concluded at 9:55 a.m.)

4 * * * * *

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I certify that the foregoing is a court transcript
2 from an electronic sound recording of the proceedings in the
3 above-entitled matter.

4
5 
6

7 Shari Riemer, CET-805

8 Dated: April 8, 2018
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25